HM Government

Triennial Review

Information Commissioner's Office

November 2015

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1 Foreword

1.1 The Triennial Review of the Information Commissioner's Office concluded shortly before the 2015 General Election. Since then, there have been a number of developments which were not documented in this Review.

1.2 The General Data Protection Regulation (GDPR) was adopted by the European Parliament and the Council of the European Union in April 2016, and will replace the current 1995 Data Protection Directive (transposed into UK law through the Data Protection Act 1998 (DPA). The GDPR will be directly applicable in UK domestic legislation from 25 May 2018.

1.3 On 18 July 2016, Elizabeth Denham was appointed as the UK Information Commissioner for a five year term, replacing Christopher Graham. Ms Denham was previously the Information and Privacy Commissioner for British Columbia.

2 Executive Summary

2.1 This Review of the Information Commissioner's Office (ICO) is the first Triennial Review which the organisation has undergone. Triennial Reviews seek to provide a robust challenge of the continuing need for individual Non-Departmental Public Bodies – both their functions and their form; and where it is agreed that a body remains in its current form, to review its capacity for delivering more effectively and efficiently.

2.2 This report focuses on the functions and the form of the ICO, known as Stage One of the Triennial Review. In order to answer the question about whether the functions of the ICO are still required and in what form they should be delivered, the Review conducted a public consultation and analysed data provided by the ICO in its annual reports.

2.3 This Review was conducted by the ALB Governance Division in the Ministry of Justice (MoJ), independently of the relationship between the policy sponsor team and the ICO. We will learn lessons from the way this Review was conducted and build on what has worked well for future reviews so they are delivered in the most efficient way possible and deliver value for money for the taxpayer.

2.4 It should be noted that on 17th September 2015 responsibility for data protection policy and sponsorship of the ICO transferred from the MoJ to the Department for Culture, Media and Sport (DCMS). It will be for DCMS to take forward the Review's recommendations. It should also be noted that policy responsibility for Freedom of Information Policy transferred from the MoJ to the Cabinet Office on 17th July 2015.

Main findings

2.5 The Review considered it impressive that the ICO has risen to the challenge of delivering their services and improving performance in a number of areas despite a reduction in the funding it receives for its functions in relation to Freedom of Information. Since 2009 the organisation has significantly reduced backlogs in the processing of Freedom of Information complaints. A number of responses to the public consultation were very positive about the services provided by the ICO.

2.6 The Review concluded that the ICO could build on these successes by further improving its services to make them more efficient and fit for purpose as a 21st century regulator. This means doing more to demonstrate its capacity to adapt to the digital and open data era; improving technological capability and quickening the pace in respect of the roll out of new delivery and management systems; and engaging with the public to demonstrate the organisation's value as the UK undergoes a digital transformation, economically and socially.

2.7 In addition, the Review found that there were a range of views on how best to maintain or enhance the ICO's independence - this included recent reports by a number of Parliamentary Select Committees and by the public in response to the consultation carried out for the Review.

2.8 The Review found that the organisation could better serve the needs of its users by ensuring that the services they deliver, fully reflect the significant technological and societal changes that have taken place over the last decade.

Conclusions

2.9 The Review concludes that the functions of the ICO are still needed and should be retained. The importance of the ICO in the digital era cannot be underestimated and the recommendations of this Review seek to reinforce the organisation's strength and to build the structure that is right for the next chapter of its existence.

2.10 However, the corporation sole model does not allow the organisation to operate optimally and the ICO should be reconstituted as a small multi-member Commission. The Review therefore makes the following recommendations:

Delivery model recommendations

i. The organisation should be reconstituted as a small multi-member Board of Commissioners with a Chief Executive Officer responsible for driving performance, operational delivery, value for money and opportunities for cost recovery where appropriate;

ii. The organisation should continue to be sponsored by and report to the department which has responsibility for data protection policy[1];

iii. The constitution of such a Board should build on best practice from international and domestic examples;

iv. Preparatory work for all of the above should be taken forward to inform the recruitment of key personnel to the ICO.

2.11 It should be noted, that as a result of recent changes to the executive and leadership team, the ICO is already informally working to a governance structure where day to day decision-making and accountability is disseminated across the wider leadership cohort. This will act as useful preparation for a formal transformation to a multi-member Commission.

Other recommendations

2.12 While this Review will not progress to Stage Two of a standard Triennial Review process due to the recommended change to the delivery model, the Review team make two additional recommendations:

v. The sponsor department should make sure sponsorship arrangements best support the proposed new delivery model.

vi. The sponsor department needs to work quickly alongside the ICO to develop a more sustainable funding model for its data protection work.

[1] On the 17th September 2015, sponsorship of the ICO transferred to the DCMS
[2] http://www.publications.parliament.uk/pa/cm201415/cmselect/cmsctech/1086/108602.htm

3 Approach to this Review

3.1 This report sets out the purpose of the Triennial Review; describes the review process and methodology; analyses the functions of the ICO and the need for them; assesses the options for how to deliver the services the ICO provides; and, finally, makes formal recommendations to conclude the Review.

Context

3.2 The landscape in which the ICO currently operates bears little resemblance to that in which the organisation was originally set up over thirty years ago. The pace of change with regards to data protection and privacy is unparalleled with emerging technologies shaping the global digital revolution which has a direct impact on the UK.

3.3 The coalition Government's response to the Science and Technology Committee's Fourth Report of Session 2014-15 – 'Responsible Use of Data[2]' published in February 2015 summarised the developments and the tensions that emerge as follows:

> '*…Data – including the vast amount that is produced every day through the use of social media – is transforming all aspects of our society. This includes the way companies generate new opportunities and interact with customers, and the nature and provision of public services.*
>
> *The Government's ambition is to make the UK one of the most advanced digital economies in the world. Intelligent use of data will play a crucial role in realising this ambition…*
>
> *As the Committee recognises,* ***protecting the rights of individuals whilst also enabling businesses to use personal information responsibly for innovation and growth is essential if the UK is to realise the full commercial and societal benefits that data can provide****.*' (HMG 2015: p1: para 3)

3.4 The coalition Government also introduced extensive proactive measures through the Transparency Agenda to increase openness, and the UK is a world leader in open data. As a result, for example, more than 16,000 datasets have been published on data.gov.uk and central government contracts worth over £10,000 are published on Contracts Finder. At the same time, the coalition government recognised the importance of the Freedom of Information Act to accountability. Proactive transparency does not obviate the need for an effective reactive disclosure mechanism, such as that provided by the Freedom of Information Act. Therefore, the coalition government took steps to strengthen it, extending it to more than 100 additional organisations, introducing enhanced rights to request and re-use datasets through the Protection of Freedoms Act 2012, and the maximum lifespan of some exemptions is being cut in parallel with the transition to a 20 Year Rule to make sure historical records are available sooner.

3.5 The Act has resulted in the disclosure of a large amount of information which might otherwise never have reached the public domain, and the number of requests received by public authorities has risen steadily. It is estimated that over 100,000 public bodies are covered, from Whitehall departments to local GPs and schools, with Network Rail being the latest addition.

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[2] http://www.publications.parliament.uk/pa/cm201415/cmselect/cmsctech/1086/108602.htm

3.6 This Review is situated within a wider social, economic and cultural context which is changing at an unprecedented pace with implications for individuals, organisations from all sectors and a significant role at the heart of these developments for the ICO.

Scope and Purpose of Triennial Reviews

3.7 It is government policy that a non-departmental public body (NDPB) should only be set up, or remain in existence, where the model can be clearly evidenced as the most appropriate and cost-effective way of delivering the function in question. In April 2011, Cabinet Office announced that all NDPBs would undergo a substantive Review once in a three year cycle. Triennial Reviews have two principal aims, represented by two stages:

i. **Stage One**: to provide a robust challenge of the continuing need for individual NDPBs – both their functions and their form; and,

ii. **Stage Two**: where it is agreed that a body remain as an NDPB, to review its capacity for delivering more effectively and efficiently, including identifying potential for efficiency savings and its ability to contribute to economic growth; and to review the control and governance arrangements in place to ensure that the public body and the sponsoring department are complying with recognised principles of good corporate governance.

3.8 All Triennial Reviews are carried out in line with Cabinet Office guidance "Guidance on Reviews of Non Departmental Public Bodies", revised in 2014. This guidance states that all Reviews should be conducted in line with the following principles:

iii. **Challenge** Reviews must be challenging. They should take a first principles approach to whether the function of a body is still needed, and the best form for delivery of that function.

iv. **Proportionality** Reviews must not be overly bureaucratic and should be appropriate for the size and nature of the NDPB being reviewed.

v. **Contextual** Reviews should not be undertaken in silos, but wherever possible be integrated with other departmental policy initiatives, efficiency and landscape Reviews.

vi. **Pace** Reviews must be completed quickly to minimise the disruption to the NDPB's business and reduce uncertainty about its future and normally take no more than six months.

vii. **Inclusivity** Reviews must be open and inclusive. The NDPB being reviewed must be engaged and consulted at both an Executive and a Non-Executive level. Users and stakeholders must have the opportunity to comment and contribute. Parliament must be informed about the commencement and conclusions of Reviews. Departmental Select Committees must be given the opportunity to input; and

viii. **Transparency** All Reviews must be announced formally, both to Parliament and to the public. All Review reports must be published once clearance has been given by the Minister for the Cabinet Office. The results of Reviews must be announced to Parliament.

Process and Methodologies

3.9 As set out in Cabinet Office guidance, Stage One of the Review should identify and examine the key functions of the NDPB. It should assess how the functions contribute to the core business of the NDPB and the sponsor department and consider whether the

functions are still needed. Where the department concludes that a particular function is still needed, the Review should then examine how this function might best be delivered.

3.10 When assessing how functions should be delivered, the Review should examine a wide range of delivery options. This should include whether the function can be delivered by local government or the voluntary or private sectors. It should also include an examination of different central government delivery models, including whether the function can be delivered by the sponsoring department, by a new or existing Executive Agency or by another existing central government body. It is government policy that NDPBs should only be set up, and remain in existence, where the NDPB model can be clearly evidenced as the most appropriate and cost-effective model for delivering the function in question. Reviews must evidence that functions have been assessed against a wide range of delivery options.

3.11 Stage Two of Reviews are only undertaken if the outcome of Stage One is that functions should still be performed by the existing NDPB in its current structure. Stage Two seeks to identify efficiencies, consider control and governance arrangements and assess performance of the organisation under review.

The Ministry of Justice approach

3.12 Triennial Reviews are consistent with the MoJ's commitment to review its ALBs, as set out in section 5.3 of the MoJ Business Plan 2011-15.

3.13 The MoJ sought to learn lessons from the Reviews conducted in the 2011-14 Triennial Review programme and drew on wider recommendations in the NAO report on that programme. Consequently, it established a central team to ensure that Reviews could be delivered independently, and as efficiently as possible - developing expertise in delivery of the Review process.

3.14 The Senior Responsible Owner (SRO) for the Triennial Review Programme is the Head of the Arms' Length Body Governance Division in the MoJ. This Review met the criteria for establishment of a Challenge Group as the ICO has a large number of staff (over 100), and operates in a high profile and sensitive policy environment. The Challenge Group, chaired by the SRO of the Triennial Review Programme, provided robust and independent challenge to the Review and includes members from Cabinet Office and the National Audit Office. Chief Executives of two Executive Agencies were asked to join the Challenge Group to build an element of peer review into the process. Membership of the Group is set out at **Annex A**.

3.15 The Review is being published as a Government report. It will be for DCMS as the current sponsor department to take the recommendations forward.

Call for Evidence

3.16 The call for evidence was issued on 25 November 2014 and closed on 16 January 2015. It was published on the MoJ website and publicised directly to interested stakeholders. A written ministerial statement was made in both Houses of Parliament confirming the start of the call for evidence and setting out the process being used by the MoJ to deliver the Review. The call for evidence consultation was launched online using 'Citizen Space' (a software tool used by the government for consulting and engaging with the public that allows respondents to submit their views online). The call for evidence questions can be found at **Annex B**.

3.17 The Justice Select Committee was informed, by ministerial letter, of the commencement of the Review. The MoJ publicised the Review via targeted emails to stakeholders with an interest in data protection and information rights, letters to devolved governments and on

Twitter. The ICO also promoted the consultation to their stakeholders and customers via their newsletter and Twitter.

3.18 165 responses were received from the public consultation, of which four were received via email. Over two-thirds of responses were received from organisations and businesses, with the remainder received from either individuals or anonymous respondents. The organisations that responded largely represented local authorities, housing groups, NHS Trusts, businesses and third sector or advisory groups. A list of respondents is included at **Annex C**.

3.19 In addition, the Review sought to understand the organisation through analysis of publicly available data as set out in the ICO's annual reports and bespoke data provided by the ICO to the Review team. The Review team worked with a small team of analysts in the MoJ to extract data and to assess and analyse trends on income, performance and where possible, on efficiency. This work has been critical to developing an in-depth understanding of the challenges and opportunities facing the ICO.

Workshops, meetings and other stakeholder engagement

3.20 In addition to the call for evidence, workshops and face-to-face meetings were held with the ICO and with key stakeholders to explain the Review and explore the issues arising.

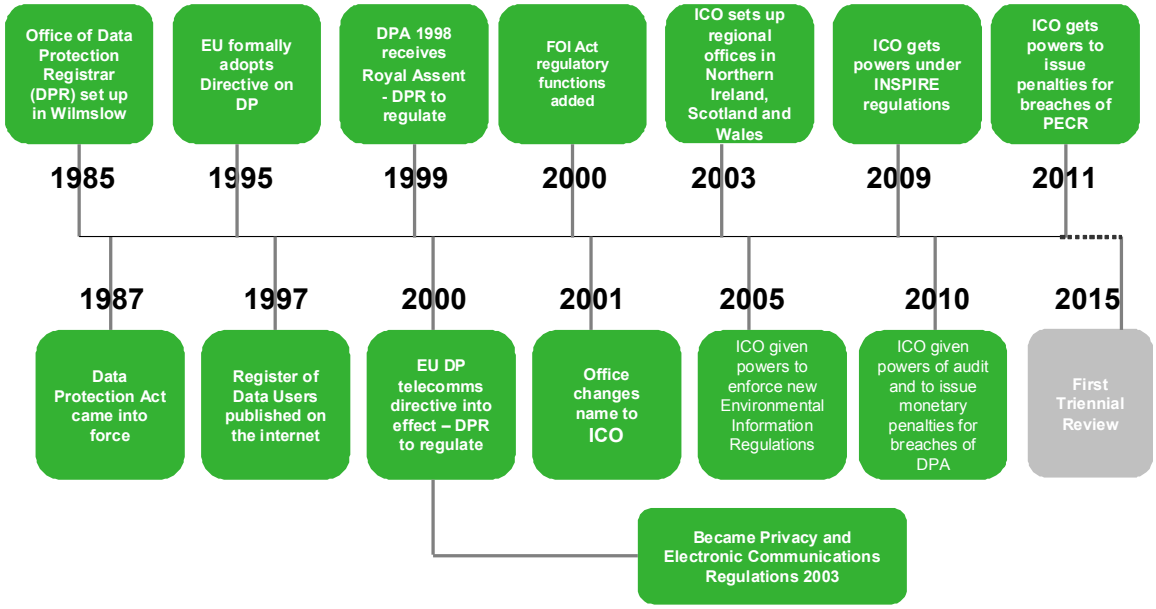
3.21 Evidence from stakeholders has informed this Review throughout. Where appropriate, this report directly quotes from, or explicitly draws upon, the evidence gathered through stakeholder engagement.

4 The Information Commissioner's Office

a) History of the ICO

4.1 The functions of the ICO have evolved over the thirty years since the Office of the Data Protection Registrar was set up in 1985 in Wilmslow, Cheshire. As Figure 1 below shows, the most long-standing of the functions performed today by the ICO is in regard to the regulation of data protection legislation following the introduction of the Data Protection Act (DPA) 1984 which incorporated the general principles of the first internally binding agreement on data protection, known as Convention 108. The European Union's Data Protection Directive (1995) then required all Member States to establish an independent supervisory authority to regulate data protection legislation. As the Data Protection Registrar effectively already performed this role under the auspices of the DPA 1984, it continued to do so (albeit having been re-named the ICO) for the purposes of the replacement Data Protection Act.

Figure 1: Timeline showing development of the ICO


Office of Data Protection Registrar (DPR) set up in Wilmslow
1985
EU formally adopts Directive on DP
1995
DPA 1998 receives Royal Assent - DPR to regulate
1999
FOI Act regulatory functions added
2000
ICO sets up regional offices in Northern Ireland, Scotland and Wales
2003
ICO gets powers under INSPIRE regulations
2009
ICO gets powers to issue penalties for breaches of PECR
2011
1987
Data Protection Act came into force
1997
Register of Data Users published on the internet
2000
EU DP telecomms directive into effect – DPR to regulate
2001
Office changes name to ICO
2005
ICO given powers to enforce new Environmental Information Regulations
2010
ICO given powers of audit and to issue monetary penalties for breaches of DPA
2015
First Triennial Review
Became Privacy and Electronic Communications Regulations 2003

4.2 The 1995 Data Protection Directive (transposed into UK law through the **Data Protection Act 1998**) gives citizens important rights, including qualified rights to know what information is held about them and to have removed or corrected information that is wrong. Organisations that process personal data are obliged to manage the information they hold about individuals in accordance with eight data protection principles.

4.3 The ICO's functions were extended in 2000 to include regulation of the **Freedom of Information Act 2000 (FOIA)**, which gives people a general right of access to information held by public authorities. In 2003 its functions were once again expanded, to include regulation of the **Privacy and Electronic Communications Regulations 2003 (PECR)** which supports the **Data Protection Act 1998 (DPA)** by regulating the use of electronic communications for unsolicited marketing to individuals and organisations. The remit of the ICO was still further extended in 2004 to include regulation of the **Environmental Information Regulations 2004 (EIR)** which gives people the right to request environmental

information from public authorities and requires public authorities to make environmental information available proactively.

4.4 The organisation now also includes regulation of the **INSPIRE Regulations 2009**, which give the Information Commissioner enforcement powers in relation to the pro-active provision by public authorities of spatial data, often referred to as geospatial data or geographic data.

4.5 Freedom of Information is a devolved issue in Scotland and a separate Scottish Information Commissioner exists to enforce the **Freedom of Information (Scotland) Act 2002**. The Scottish Information Commissioner also enforces the **Environmental Information (Scotland) Regulations 2004** and the **INSPIRE (Scotland) Regulations 2009**. This Review does not include the Scottish Information Commissioner.

4.6 In 2003, the ICO set up regional offices in Scotland, Wales and Northern Ireland – as shown in Figure 1. The main focus of the ICO's Scottish office, based in Edinburgh, is data protection, for which the ICO is the sole regulatory body in Scotland. However, the ICO does have regulatory power under the Freedom of Information Act for UK public authorities based in Scotland, including:

i. The Forestry Commission;
ii. BBC Scotland; and,
iii. The Scottish Consumer Council.

4.7 The ICO's office in Cardiff provides a local point of contact for members of the public and organisations based in Wales, operating an advice service to address general enquiries on data protection and freedom of information. They work with the Welsh government and wider public sector to influence relevant areas of policy and implementation to promote information rights.

4.8 The ICO's office in Belfast provides a local point of contact for members of the public and organisations based in Northern Ireland. It operates an advice service to address general enquiries on data protection and freedom of information and promotes good practice in information rights by raising awareness of organisational responsibilities across all sectors. It also influences policy in related areas by working closely with the departments of the Northern Ireland civil service and the wider public sector.

b) Staffing and management structure

4.9 The Information Commissioner is a Corporation Sole (as set out in schedule 5 of the DPA). A corporation sole can be either a public or ecclesiastical office that has a separate and continuing legal existence, and only one member (the sole officeholder).

4.10 The Information Commissioner is appointed by The Queen on recommendation from the Prime Minister. The appointment is subject to the outcome of pre-appointment scrutiny by the Justice Select Committee (JSC).

4.11 The current Information Commissioner was appointed in June 2009 for five years. His appointment was extended in June 2014 for a further two years, in line with amendments made in the Protection of Freedoms Act 2012 which set the maximum term of appointment at seven years. The Information Commissioner is accountable to Parliament for his statutory functions. In practice this means Section 52(1) of the Data Protection Act 1998 and Section 49(1) of the Freedom of Information Act 2000 requires the Information

Commissioner to present his annual report and accounts to Parliament. The Information Commissioner and his deputies also regularly appear before the Justice Select Committee to discuss governance and policy issues.

4.12 The organisation itself is classified as a Non-Departmental Public Body and at the time of the review was sponsored by the MoJ. The sponsorship relationship is managed by officials in the Data Protection Policy team[3]. The MoJ Permanent Secretary has designated the Information Commissioner as the accounting officer for the ICO.

4.13 The ICO's full-time equivalent (FTE) headcount has increased by almost a fifth over the past five years. It stood at 302 FTE at the end of 2008/09, rising by 17% to 354 FTE by the end of 2013/14. The organisation has an annual staff turnover of around 10%.

4.14 In terms of demographics of the ICO workforce, in 2013/14:

- Slightly over half (57%) identified as female. Of the 19 members of the organisation's leadership group (senior staff), three are female;
- The vast majority (95%) declared their ethnicity as white; and,
- Five per cent have declared a disability.

4.15 The Information Commissioner is supported in carrying out his statutory duties by the organisation's Management Board, which comprises the Executive Team and four non-executive members. At the time of the Review, the Executive Team consisted - alongside the Information Commissioner himself - of two Deputy Information Commissioners (one for FOI and one for data protection) and a Deputy Chief Executive. The non-executive members provide a challenge function, inform policy considerations and oversee the ICO's performance. Appointed on a non-statutory basis, the non-executive members do not and cannot have any role in regulatory decision making.

c) Funding

4.16 At the time of the Review, the ICO has two funding streams: (i) an annual grant-in-aid from the MoJ to cover expenditure on FOI work; and, (ii) notification fees paid annually by organizations registered on the ICO's Data Register, which covers work on data protection.

Grant-in-aid

4.17 The grant-in-aid has been reduced by around £1.75m from £5.5m in 2009/10 to £3.75m by 2013/14[4]. This covers the regulation of over 100,000 public authorities which are subject to FOIA.

Notification Fees

4.18 Under the Data Protection Act 1998, 'data controllers' (persons who determine the purposes for which and the manner in which any personal data are to be processed) are required to notify to the ICO that data processing is being carried out. This process attracts a regulatory fee and since 2009/10, there has been a two tier payment system.

- Tier 1 - £35 fee: includes private sector organisations which employ fewer than 250 people or have a turnover of under £25.9 million; public sector organisations employing fewer than 250 people; all third sector organisations which are required to register; and, new

[3] On 17th September 2015 sponsorship of the ICO (including the current sponsorship team) transferred to the DCMS
[4] In real terms, this represents a reduction of approximately £2.2 million

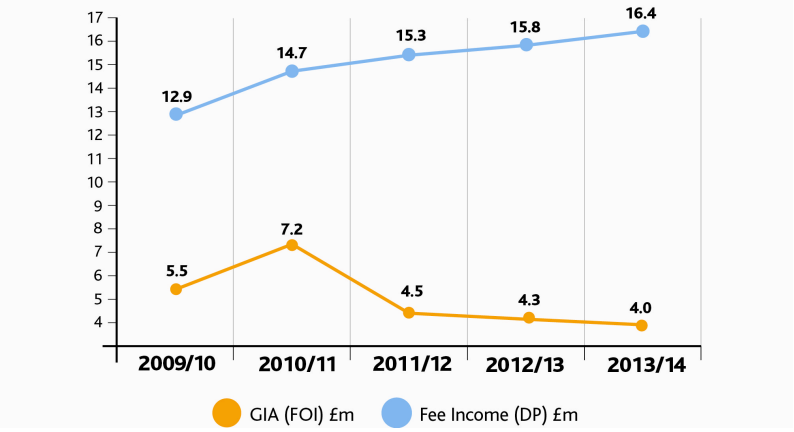
organisations in existence for less than one month. Fees from Tier 1 data controllers account for the majority of the ICO's data protection income.

- Tier 2 - £500 fee: includes all data controllers who do not meet Tier 1 criteria – i.e. private organisations with a turnover of £25.9 million or more and 250 or more staff; or public bodies with 250 or more staff.

4.19 The £35 fee has not been raised since introduction in 2001. Tier 2 fees have not increased since they were introduced in 2009/10.

4.20 Data protection income has increased from £12.9m in 2009/10 to £16.4m in 2013/14. Figure 2 shows the two funding streams over the past five years. Approximately 80% of the ICO's revenue comes from data protection fees. The balance between FOI/EIR and data protection funding has shifted further towards data protection over the last five years.

Figure 2: Grant in Aid and Fee Income



4.21 The number of organisations in Tier 1 registering with the ICO as a Data Controller has increased year on year rising from 325,000 in 2009/10 to 383,000 in 2013/14. This has driven the increase in data protection income seen in Figure 2 above. The number of organisations registered in Tier 2, however, has remained stable since 2010/11 at 6,000 (it doubled between 2009/10 and 2010/11 following implementation of the two tier system).

4.22 In terms of the status of organisations registered across both tiers, a report commissioned by the ICO in 2008 on their Register of Data Controllers[5] showed them to be broadly split as private sector (54%); public sector (39%); and, charities (7%). The ICO does not hold a definitive list of how many organisations in total in the UK should be registered with them as Data Controllers.

4.23 The ICO do not receive any additional funding for regulating PECR, EIR or INSPIRE. They have absorbed the costs of additional work within the two existing funding streams – the former under data protection and the latter two under FOI.

4.24 Since 2005 the ICO has operated an apportionment model whereby all costs (frontline and back office) were apportioned between the data protection funding stream (fees) and the FOI funding stream (grant-in-aid). The model allowed virement from grant-in-aid to data protection expenditure - but not vice versa - although in practice no virement ever occurred. This model restricted the ICO's ability to deliver efficiencies in its budget and meant that it

[5] "Social and Market Research (2008). Notifications Payment Consultation On Behalf of the Information Commissioner's Office: Final report. SMSR.

was not possible to deliver some essential back office projects as the proportion of FOI funding was sometimes insufficient.

4.25 The ICO and MoJ worked together to resolve this in agreement with HM Treasury and consistent with the principles of 'Managing Public Money'. As a result, the ICO now has the ability to fund back office costs from either data protection or FOI income at their discretion. The ICO will continue to have to apportion costs between the two funding streams for frontline/service delivery functions on data protection and FOI to prevent a user of one ICO service subsidising the user of another.

4.26 Despite this recent positive development, it was agreed by both the ICO and the MoJ that the current funding structure for data protection needs to be reformed to reflect the changing nature of data processing in the digital era and to take account of proposed changes to the system of notification in the draft General Data Protection Regulation (GDPR). The current fees structure acts as a blunt tool and does not take into account the varying level of risk involved in the data processing which different organisations are undertaking. Any new structure therefore should incentivise data protection compliance amongst organisations, with the greatest financial burden falling on those organisations which cost the ICO the most to regulate. Work had been ongoing between the MoJ and the ICO but an alternative structure was not finalised before the Review started and will need to be reviewed by DCMS in light of the recommendations attached to this Review. Any new fee structure will need Parliamentary approval and the timetable will need to take account of the continued EU negotiations.

Summary

4.27 The ICO has grown and absorbed a number of high-priority functions since its establishment 30 years ago. The organisation has adapted to this change and has withstood absorbing these additional pressures at a time when part of its budget has been reduced. The financial model it has contended with has not permitted it to operate in the way that would have been most efficient and has been a frustration to the organisation. However, it has nevertheless sought to drive performance improvement, seek efficiencies and to raise awareness of information rights despite these constraints. The improvements made in performance and timeliness over a longer period - particularly in regard to FOI - have been recognised by, for example, the Justice Committee in its 2013 Annual Report on the ICO[6].

4.28 It is against this background that the Review sought to gain a more comprehensive understanding of the organisation itself, the environment in which it currently operates and the key factors likely to shape its future in order to ground emerging recommendations solidly in the current and emerging context.

[6] Justice Committee 2013 Ninth Report The functions, powers and resources of the Information Commissioner

5 Question One: Are the functions of the ICO still required?

5.1 The ICO carries out a number of functions in regards to the Acts detailed in paragraphs 4.2 to 4.4 above. The ICO promotes good practice; assesses and adjudicates on complaints; and has a direct regulatory role, taking appropriate action when the law is broken.

a) The Legal basis

5.2 The UK is obliged under European law to establish an independent supervisory authority to regulate data protection legislation[7]. EU law on data protection is binding on Member States and the UK must therefore abide by this requirement. At present the ICO performs the role of independent supervisory authority. A new EU regulation is likely to come into force in 2018 which will require that: 'each member state shall provide that one or more independent public authorities are responsible for monitoring the application of this Regulation'; and, 'each supervisory authority shall contribute to the consistent application of this Regulation throughout the Union.' Accordingly, although they do not necessarily have to be housed within the ICO, many of the ICO's core functions will need to remain.

5.3 The Privacy and Electronic Communications EU Directive 2002 does not impose specific requirements regarding enforcement through an independent supervisory authority. However, the 2003 Regulation which imposes the EU legislation on privacy and electronic communication does impose enforcement functions on the Information Commissioner.

5.4 The 2004 domestic regulations which transpose the 2003 Environmental Information Directive 2003/4/EC make the Information Commissioner responsible for enforcement of the Environmental Information Regulations. The Information Commissioner is also responsible for enforcement of the INSPIRE Regulations 2009.

5.5 The Freedom of Information Act (2000) gives the Information Commissioner a series of core responsibilities in regard to enforcing the obligations imposed on public authorities by the Act. In contrast with data protection however, there is no EU obligation to have an FOI regime: the existence of a regime represents a purely domestic policy choice that there should be one. Therefore, while this Act is in force in its current form, a Commissioner carrying out the functions given to him by the Act, must be in place. But, if a decision was made that there should be no FOIA, or that FOIA should continue to exist but that there need be no body regulating compliance with it, then, unlike with data protection which is subject to overarching EU obligations that cannot simply be dispensed with at domestic level, there would be no fundamental legal impediment to removing the ICO's FOIA functions.

The functions under review are contained in domestic primary legislation. The functions relating to data protection are required to be in place by EU law.

[7] EU Data Protection Directive (1995) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML

b) Consultation evidence received on ICO's functions

5.6 To complement understanding of the legal basis underpinning the functions performed by the ICO, the public consultation asked whether the provision of the ICO's services to individual users and organisations remains necessary. Nearly all respondents answered in the affirmative.

> "*The ICO is absolutely necessary. Individuals need to ensure that their personal data is handled securely and confidentially.*" (NHS Foundation Trust)
>
> *"The ICO plays a key role in upholding information rights and promoting 'open government'" (Government Department)*

5.7 Some respondents gave several reasons in support of their views. The two reasons cited most frequently were: the importance of having guidance on how the Acts should be interpreted and applied; and, protection and enforcement of individual citizens' information rights. Responses detailed the interplay between these two factors as key to the role of the ICO.

5.8 Respondents saw much value in the ICO providing guidance to organisations in interpreting the Acts. They also suggested it is not just organisations that need guidance, with a feeling among some that individuals do not always have a clear understanding of the parameters of the Acts.

> "*The areas in question are not straightforward and the assistance of the ICO in deciphering them is invaluable".* (Financial Services Group)
>
> *"The number of vexatious requesters is also on the rise. There is widespread misunderstanding about the legislation and so applicants can believe that they have a greater entitlement to information or greater rights than the legislation permits. The ICO's advice and guidance is invaluable and its judgments are helpful not only to resolve existing complaints but to help authorities manage future requests".* (Local Authority)

5.9 The third main reason given in support of retaining those functions delivered by the ICO related to independence and transparency. Respondents referred to the importance of having an independent body administer these services, both for helping ensure public confidence and for adhering to legislative requirements. The ICO's role in supporting the wider transparency agenda and principles of open government was also cited.

> *"The ICO's role and responsibilities are based in statute. The services it provides to public bodies and individuals are well embedded. Loss of ICO's services would have a detrimental impact on information rights of citizens, and undermine accountability, openness and transparency in a wide range of organisations."* (Devolved Government)

5.10 In contrast to the majority of respondents who argued that the functions delivered by the ICO remained necessary, nine proposed otherwise, suggesting that all or part of the functions were not required. Of these, a small number of respondents considered that the organisation should be split as the requirements for regulating data protection and privacy were considered to be inadequately delivered as part of an organisation seeking to balance the right to privacy and the right to know simultaneously.

There is strong public support for the continuation of the functions currently delivered by the ICO.

c) Conclusion

5.11 Conclusion: There is both a legal requirement and also public support for the functions delivered by the ICO. The Review concludes that the functions must continue to exist.

6 Question Two: How should these functions be delivered?

6.1 This section sets out the emerging themes from the Review process and assesses options for how functions should be delivered in light of these themes.

6.2 The Review process, which included public consultation, focused stakeholder engagement and examination of the ICO's structure and performance, highlighted three particular themes that required further exploration. These are:

i. Service delivery;

ii. Fitness for the future; and,

iii. Independence.

6.3 The Review will now consider each of these areas in turn.

a) Service Delivery

6.4 The consultation invited views on whether the ICO could improve the delivery of its functions. Over three-quarters felt that there were areas in service provision which could be improved, including:

a. The need for stricter enforcement on both the data protection and FOI sides.

> *"While we have seen a real improvement in clearing the backlog of FOI appeals and there is much welcome detailed guidance on a whole raft of issues on the ICO website, the enforcement role of the ICO is still dreadfully weak in some areas." (*Information governance practitioner*)*
>
> *"There is some concern that as regards its issuance of monetary penalty notices, the ICO has over-concentrated on pursuing easy, "low-hanging" fruit such as security breaches in the public sector compared to taking on more complex but equally important concerns as regards certain substantive business practices concerning data especially in the private sector." (*University*)*
>
> *"It is frustrating when the ICO decides to resolve an FOI dispute informally with a complainant rather than issue a Decision Notice finding against the complainant. The police service often prefers a formal public Decision Notice as evidence that its approach and decision in withholding information was correct." (*Police representative body*)*

b. Time taken to respond effectively to complaints.

> *"Section 50 Complaints still take a long time to investigate and process through their systems and in some cases it can take several months to get a formal ICO Decision Notice"* (Police representative body)
>
> "*There are concerns that the ICO is not dealing as effectively as it should do with individual complaints or concerns from data subjects*" (Academic)
>
> "*It can take a considerable amount of time for a Data Controller to be notified (by the ICO) that a complaint about its data protection activities has been received*" (Local Authority)

c. The need for better trained staff, able to have a dialogue on an individual case rather than a 'one size fits all' approach, and the need for sector specific guidance.

"Advisors need to be qualified and need to be able to discuss issues relating to the legislation". (Local Authority)

"The guidance and material produced by the ICO feels like 'one size fits all'. To what extent does the ICO understand its different audiences (small organisations, third sector, individuals large companies, public sector etc)?" (Advisory Body)

"…the approach to assessments and advice is very rote (using standard phrases and paragraphs in correspondence) and gives the impression of lack of understanding" (Energy provider)

6.5 A handful (fewer than ten) of organisations in the public and advisory sectors noted an inconsistency in how cases are handled. Some also commented that they considered the ICO to be under-resourced and were concerned that staff did not receive a competitive salary.

"There have been instances of inconsistency between case officers at the ICO in terms of how they conduct investigations". (Local Authority)

6.6 The ICO themselves are of the view that the services they deliver could be improved.

"There is certainly more the ICO could do to promote transparency and compliance with FOIA if front line FOI services were better funded. Grant-in-aid from MoJ has been progressively cut in recent years and, as a result, the ICO is not able to provide the same level of advice and guidance that registration fees fund on the data protection side of the business". (ICO)

6.7 Approximately one in ten respondents considered that the services did not need improving and praised the organisation.

"The collaborative engagement I have had with the ICO has been superb and have adapted in relation to changing business requirements". (Individual)

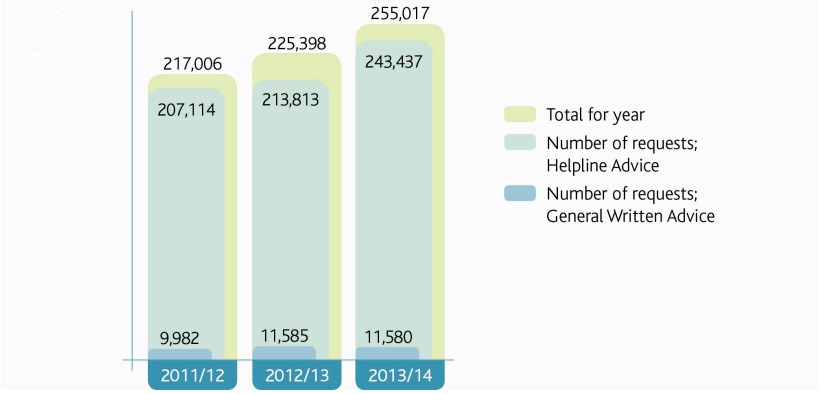
"…..dealings with the ICO have been positive, particularly its contact with ICO policy advisors. The ICO continues to provide a valuable advice and guidance role and its online publications are particularly useful". (Government Department)

Analysis of ICO's data provided in its Annual Reports

6.8 In order to explore in more detail the issues around service delivery emerging from the consultation responses, the Review analysed data set out in the ICO's Annual Reports on demand, performance and service delivery over the last 5 years. Demand for the ICO's services broadly falls into (i) requests for advice (received via written communication or the helpline) and (ii) complaint casework.

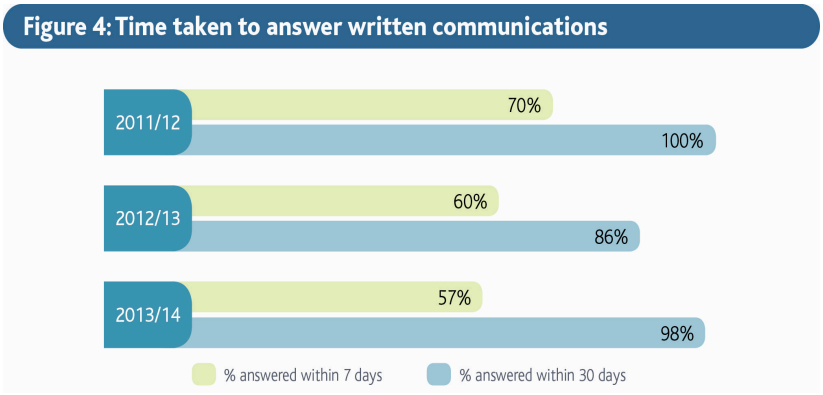
6.9 Figure 3 shows that demand for advice is rising. The ICO receives requests for advice either through written requests (emails and web enquiry form) or through the telephone helpline. The total number of requests has increased over the past three years, driven by a 17.5% rise in helpline advice as shown in Figure 3. The total advice workload has been and continues to be made up of around 95% helpline advice requests.

Figure 3: Total Advice Workload: Helpline and Written



6.10 Figure 4 shows that the ICO answered 98% of written communications within 30 days and 57% of those within seven days in 2013/14.

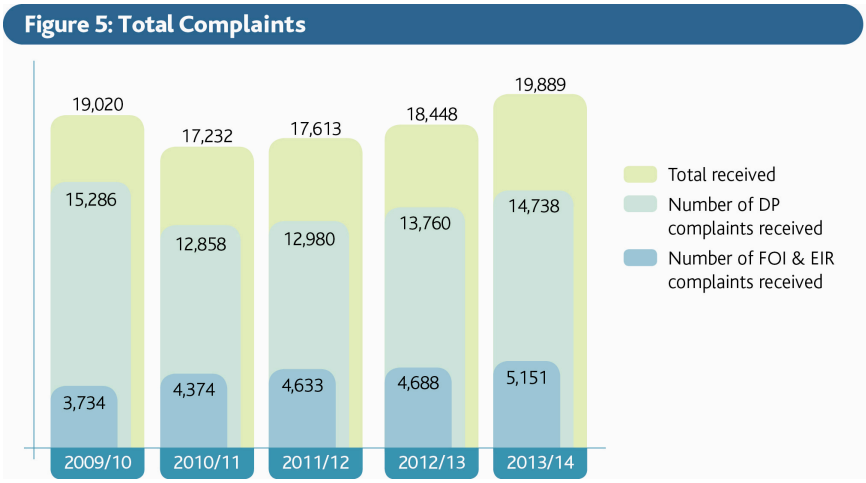
Figure 4: Time taken to answer written communications



6.11 Over the same period – 2011/12 to 2013/14 - the ICO has maintained a steady rate of answering 95% of calls received to its helpline.

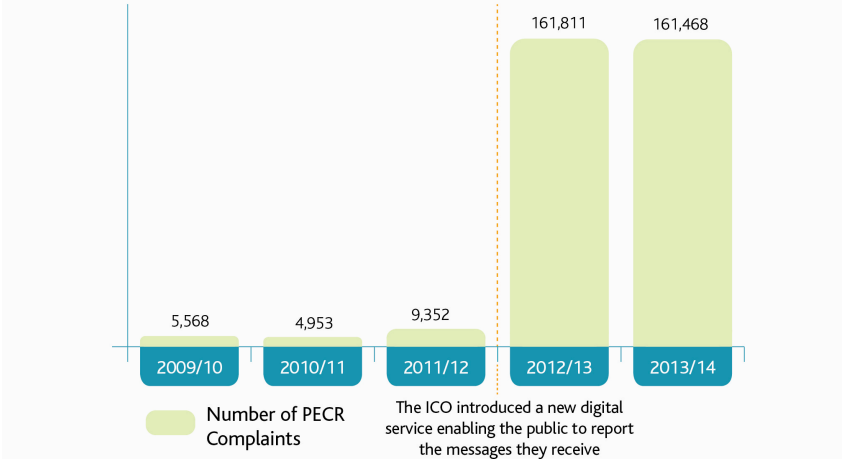
6.12 The ICO has a statutory duty to investigate complaints on data protection and FOI/EIR. Figure 5 shows that the total number of Complaint Cases received for both data protection and FOI/EIR by the ICO has fluctuated between 17,000 and 20,000 cases per annum over the past five years. There has been a steady rise in the number of FOI/EIR cases received over the last five years. Complaint casework for data protection saw a drop off between 2009/10 and 2010/11 and has increased year on year since then.

Figure 5: Total Complaints



6.13 The ICO's functions were extended in 2003 to include PECR which supports the Data Protection Act by regulating the use of electronic communications for unsolicited marketing to individuals and organisations. Revisions to PECR that came into force in May 2011 saw the ICO subsequently introduce a new digital service enabling the public to report 'consent for cookies' messages received. This saw the number of PECR complaints being reported to the ICO increase dramatically as shown in Figure 6.

Figure 6: Complaints under PECR

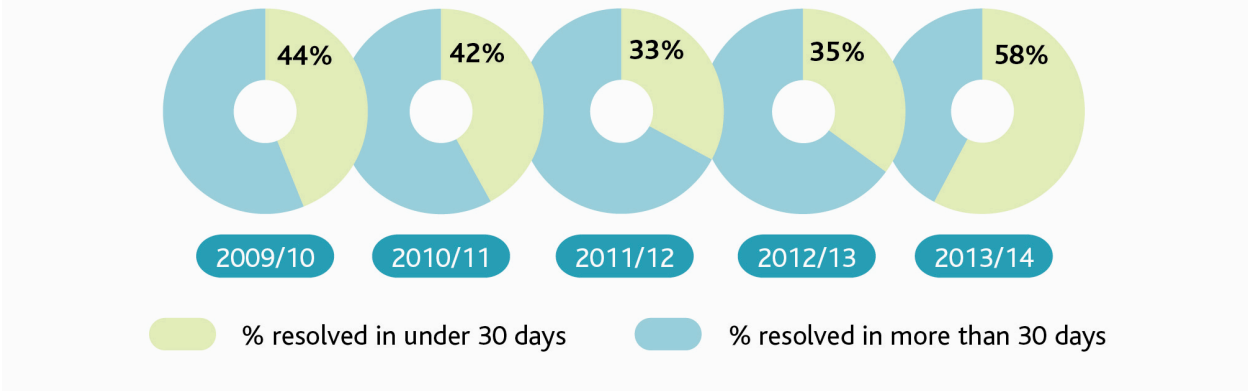


6.14 The data in paragraphs 6.9 to 6.13 shows that demand for advice and complaint casework is rising across all areas of ICO business.

Focus on: Data Protection Complaint Casework

6.15 Between 2009/10 and 2012/13 the proportion of total cases answered in under 30 days decreased (see Figure 7). In 2013/14, however, a substantial improvement was recorded, with the proportion answered within 30 days rising from 35% (2012/13) to just under 60%. The total number of data protection complaint casework finished in 2013/14 was 15,492. Of these, almost 60% of cases were completed within 30 days and a very small proportion – 3% - took over six months to complete.

Figure 7: Data protection complaint casework resolved in under 30 days

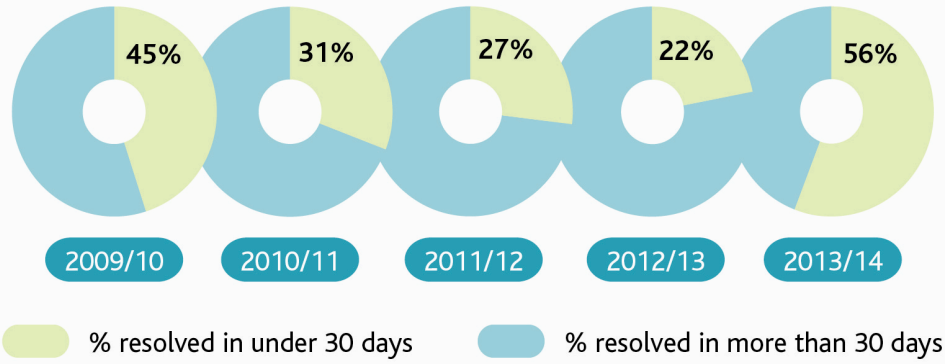


Focus on: Freedom of information and Environmental Information Regulations Complaint Casework

6.16 A similar pattern of declining performance followed by a sharp upturn and improvement can be seen in the proportion of total FOI and EIR cases answered in under 30 days (see Figure 8). The total halved from 45% in 2009/10 to 22% in 2012/13 but then rose substantially to 56% in 2013/14.

6.17 The total number of FOI and EIR complaint casework finished in 2013/14 was 5,296. Of these, over 55% of cases were completed within 30 days and 12% of cases took over six months to complete.

Figure 8: FOI and EIR complaint casework resolved in under 30 days



Outcomes: What happens to data protection complaints?

6.18 Where a complaint is made too early to the ICO to enable them to take action, either because they have not received enough relevant information or the organisation concerned has not yet completed its investigation, the case is closed at the 'made too early' stage.

6.19 The complaint is not progressed in cases where, for example, the organisation processing the information - and thus the subject of complaint - is based outside the UK, or where the complainant has subsequently withdrawn their complaint.

6.20 For those cases which do progress, the ICO makes an assessment of whether the organisation has complied with its obligations under the DPA and concludes that the organisation is either likely or unlikely to have done so.

6.21 Table 1 shows the outcomes of the data protection Complaint Casework received by the ICO from 2011/12 to 2013/14. While the share of total complaints made too early has fallen slightly over the past three years from 36% in 2011/12 to 33% in 2013/14, there may be more that could be done here to ensure that complaints are made at the appropriate time.

Table 1: Outcomes of DP complaint casework

Year	2011/12	2012/13	2013/14
Complaint made too early (%)	4,581 (36%)	4,284 (30%)	5,112 (33%)
Complaint not progressed (%)	1,400 (11%)	1,856 (13%)	2,169 (14%)
Complaints progressed (%)	6,617 (53%)	8,140 (57%)	8,210 (53%)
Total complaints submitted	12,598	14,280	15,491

6.22 Of all complaints which the ICO has examined for compliance - excluding those which were made too early or were otherwise not progressed - approximately three-fifths resulted in the ICO judging the organisation to be unlikely to have complied with its data protection obligations. The trend over the three years shown in Table 2 below suggests that organisations are increasingly not complying with their obligations under the DPA. There may therefore be scope for the ICO to further improve its reach in terms of guidance for organisations on their duties under the DPA.

Table 2: Assesment of progressed DP complaints (Base – all complaints progressed)

Year	2011/12	2012/13	2013/14
Compliance likely (%)	2,672 (40%)	3,142 (39%)	2,943 (36%)
Compliance unlikely (%)	3,945 (60%)	4,998 (61%)	5,267 (64%)
Total Complaints Progressed	6,617	8,140	8,210

Outcomes: What happens to FOI and EIR complaints?

6.23 Before a FOI/EIR complaint can be submitted to the ICO, the public body in question must complete an internal review of the way the original request has been handled. A complaint is classed as 'ineligible' by the ICO if it does not raise FOI or EIR issues (i.e. complaints that are not about information requests per se) or where the individual has not provided enough information to identify that any FOI/EIR obligation falls upon a public authority. Potentially valid complaints are not progressed in cases where complaints are raised with the ICO after an undue length of time or where complainants no longer wish to pursue their complaint.

6.24 For those cases which do progress, complaints are either informally resolved by the ICO without a formal Decision Notice being served; or a Decision Notice is served.

6.25 Table 3 shows that there has been a threefold rise in the number of complaints made too early to the ICO from 2011/12 to 2013/14. Approximately one fifth of complaints received by the ICO are 'ineligible complaints'. The proportion of complaints received by the ICO which are either 'ineligible' or 'made too early' has doubled from approximately three in 10 cases in 2011/12 to six in 10 cases in 2013/14.

Table 3: Outcome FOI and EIR complaint casework

Year	2011/12	2012/13	2013/14
Ineligible complaint (%)	857 (18%)	939 (20%)	953 (18%)
Complaint too early (%)	524 (11%)	1832 (39%)	1960 (37%)
Complaint not progressed (%)	95 (2%)	94 (2%)	158 (3%)
Informally resolved (%)	2,144 (45%)	752 (16%)	1,006 (19%)
Decision notice served (%)	1,143 (24%)	1,127 (24%)	1,261 (24%)
Total complaints submitted	4,763	4,744	5,338

6.26 When the ICO issues a Decision Notice with its conclusion on whether or not a public body has met its obligations under the FOIA, the complainant or the public body can appeal to the First Tier Tribunal (FTT). The proportion of Decision Notices appealed in the FTT has remained at about one in four in each of the past five years (see Table 4).

Table 4: Decision notices served and appealed

Year	2009/10	2010/11	2011/12	2012/13	2013/14
Total decision notices served	628	817	1131	1106	1261
No. of decision notices appealed	161 (26%)	202 (25%)	290 (26%)	248 (22%)	311 (25%)

6.27 Outcomes of these appeals are shown in Table 5 below. Cases where the appeal is either 'allowed' or 'part allowed' indicate that the Decision Notice has been overturned either in full or in part, i.e. the FTT find against the ICO's decision. While the proportion of appeals either allowed or part allowed has remained relatively stable, at around one in five, this means that a fifth of the ICO's decisions are deemed by the FTT to be (wholly or partly) not compliant with the FOI Act. This is set against the relatively static landscape of the legislation, which suggests there may be scope for the ICO to reduce the proportion of appeals in which at least some element of their decision is overturned.

Table 5: Appeals outcomes

Year	2009/10	2010/11	2011/12	2012/13	2013/14
Dismissed	36%	35%	39%	39%	54%
Struck out	4%	15%	17%	18%	9%
Withdrawn	38%	21%	12%	14%	13%
Consent order issue	–	8%	9%	8%	5%
Part allowed	10%	15%	*	5%	9%
Allowed	12%	4%	*	16%	10%
Invalid	0%	2%	1%	0%	–
Total appeals decided in reporting period	115	155	–	278	270

– The ICO did not provide a breakdown of these figures
* The ICO reported that 'Allowed' and 'Part Allowed' together accounted for 20% in 2011/12

6.28 The data in paragraphs 6.15 to 6.27 suggests that there is scope for the ICO to review where it can best focus effort to drive efficiencies and improvements in delivering its services.

Key findings regarding service delivery

6.29 The public consultation showed that users of the ICO's services broadly considered that there was significant scope to improve delivery and performance of those services. Further analysis shows that the ICO has delivered improvements to its services despite resource constraints but that there remains scope for more to be done.

6.30 A key criteria for the Delivery Model for the ICO should be to enable a greater focus on performance and efficiency and enhance service delivery.

b) Fitness for the Future

6.31 As highlighted in paragraphs 3.2 to 3.6, the world has changed considerably since the ICO was first set up in 1985. Advances in technology have seen the rise of the first digital revolution which brought the internet, and what has been termed 'the second digital revolution' with the advent of, among other developments, 'the Internet of Things'. The benefits of technological advancement are seen in almost everything that we do and everywhere we go for example, communications, healthcare and retail. Our personal data is collected and stored and there is a legal right and a public expectation that the data is in safe hands and will not be shared with others unlawfully. Technology has revolutionised the way and the scale in which organisations and individuals collect and share personal data and with that comes the need for the ICO to evolve and ensure it has the capacity to meet the ever-changing challenges it brings.

6.32 A recent report by the Government's Chief Scientific Advisor, Sir Mark Walport, titled *"The Internet of Things: making the most of the Second Digital Revolution"*[8] (Government Office for Science, 2014) recognises that the government has a role to play in promoting and facilitating the benefits of new technologies while mitigating any risks. The report makes ten recommendations to help maximise the opportunities and reduce the risks of new technologies. One of these recommendations focuses on the leadership role of government and suggests it should adopt high ambitions in fostering and promoting the vision of the Internet of Things. It describes eight barriers and catalysts for doing this, of which one is the need for good 'regulation and legislation'. The report recognises that the ICO will need to continue to play a key role in handling the challenges of balancing benefits and harms in the area of personal data.

6.33 Against this backdrop, the Triennial Review consultation sought the views of the public on the ICO's fitness for the future. The Review received a significant number of representations from individuals and organisations concerned to ensure that the ICO was able to protect citizens in the global digital era.

> *"As an enforcer the ICO needs to be much better at protecting the rights of individuals, particularly in respect of privacy and data protection where citizens are themselves often only vaguely aware of their rights, or the potential harms resulting when their rights are ignored."* (Software development agency)

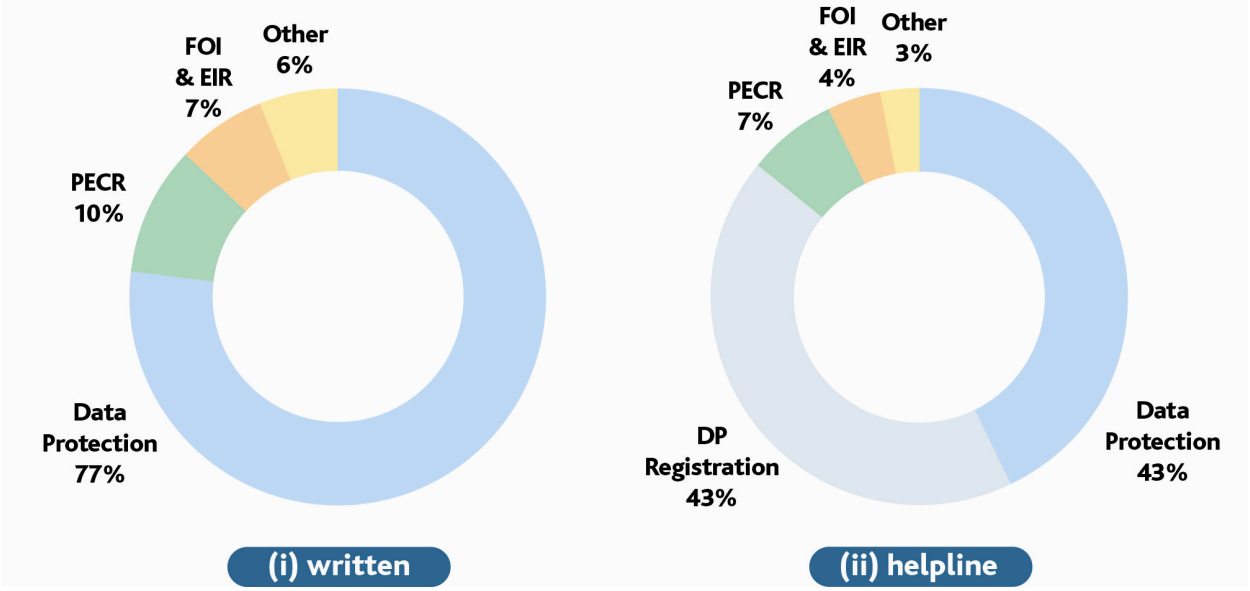
> "*With the continuous development of technology, big data and connected technology for example and uses of data with differing and changing mediums, the role of an Independent Regulator continues to be necessary, from the perspective of the provision of pragmatic interpretation on practical aspects of the laws that enables business to plan and operate with legal and regulatory certainty, which ultimately serves the interests of end consumers. Without such a focus point, it would be near impossible to gain a consistent application of laws across business sectors and is likely to undermine the intention of the legislation. It is additionally important the Independent Regulator keeps pace with changing technologies, business and consumer requirements. Without such oversight, there is the significant potential for consumer protection transparency and trust to be eroded." (*Energy provider*)*

> *"The pace of change in this area is inexorable, and any regulatory authority in this area is bound to be challenged. It is evident that the ICO has been striving to rise to these challenges e.g. in its recent guidance on cloud technologies and the increasing workplace trend of 'bring your own device (BYOD)', and also by using social media channels to disseminate advice and raise awareness. Given the global nature of these developments, influencing and collaboration at an international level will become even more necessary. Safeguarding adequate current and future funding for the ICO activities in these areas will become of key importance".* (NHS Body*)*

6.34 The Review sought to assess the relative demand on the ICO's services of data protection and FOI separately. Figure 9 below shows that approximately 90 per cent of queries/requests for advice received by the ICO in 2013/14 concerned data protection and PECR and less than 10 per cent of queries relate to FOI and EIR. This pattern is consistent for both written and helpline advice and shows that the ICO's function of regulating and advising on data protection issues is particularly well used.

[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409774/14-1230-internet-of-things-review.pdf

Figure 9: Business area to which queries relate (2013/14)



KEY FINDINGS

6.35 There is an increasing demand on the ICO's services, particularly in relation to data protection. In light of rapid technological developments impacting on the area of data privacy and security, the demand on the ICO for these services is anticipated to continue to increase. There is also likely to be a corresponding call for greater public engagement on achieving the optimum role for regulation in this area – a role on which there are likely to be contested views.

6.36 A key criteria for the Delivery Model for the ICO should be to support an increasing demand for data protection advice and regulation and to respond to the higher profile and enhanced public visibility on the issues arising from privacy in the digital era.

c) Independence

6.37 The issue of the ICO's independence has been discussed publicly and considered in depth on a number of occasions in recent years. Parliamentary committees have called for the ICO to be given increased independence and powers, including the Justice Committee[9] (2013: p12), and most recently, the Public Administration Select Committee[10] (2014: p30), which recommended that the ICO should report to Parliament.

6.38 As the previous sponsor department, MoJ has in the past carefully considered the case for the ICO to become a Parliamentary body but decided not to proceed given that – unlike other Parliamentary bodies – the ICO's business does not relate primarily to Parliament. The Information Commissioner is completely independent of government in his regulation of the legislation for which he is responsible. The government is fully committed to an independent Commissioner and its critical role as a champion and protector of information rights and took steps, through introducing new provisions in the Protection of Freedoms Act

[9] http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/962/962.pdf
[10] http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/110/110.pdf

(POFA) 2012, to enhance the Commissioner's day-to-day corporate and administrative independence and sought to dispel any perceptions that the Commissioner is not fully independent. This Act enabled the Commissioner to proceed with staff appointments, to charge for certain services; and, to issue statutory codes of practice under the DPA rather than seeking the consent of the Secretary of State for Justice before doing so. Changes were also made to the terms of the Commissioner's appointment and tenure to increase transparency and protect against any potential undue influence.

6.39 The MoJ also introduced a new Framework Document in 2011 that was substantially shorter than the previous document and reflected more accurately the mature relationship between the ICO and MoJ. In addition to including the new provisions contained in POFA 2012, the Framework Document included the following points:

- revised delegated expenditure limits (DELs) for the ICO;
- greater flexibility for the ICO in the money it carries over to the next financial year, and how and when it draws down grant-in-aid payments;
- removed the requirement for the ICO to seek comments from the MoJ on its annual report or statement of accounts;
- referred to overarching guidance, for example HMT's Managing Public Money, rather than setting out specific requirements in the Framework Document which allows the ICO to have greater flexibility over a number of activities including managing risk, taking out insurance and corporate assurance procedures without requiring the ICO to seek the agreement of the MoJ; and;
- continues to recognise the responsibility of the MoJ to account for the money the ICO is allocated through Parliament.

6.40 The Framework Document is due to be renegotiated, pending the outcome of this Review.

Public consultation: Views on the issue of independence

6.41 The Triennial Review sought views through the public consultation on whether the ICO should continue reporting to Parliament or to a government department as a means of protecting the organisation's independence.

6.42 Protecting the independence was of strong concern to nearly all respondents. Just over half of respondents considered that the organisation should report to Parliament; just over one tenth considered it should report to a government department and a third had mixed views. Of those that consider the ICO should report to parliament, several referenced this of particular importance to FOI.

*'Information rights are a cornerstone of democratic society and without some form of independent yet authoritative oversight and regulation, it is inevitable that those rights will be eroded.' (*Independent Professional*)*

6.43 The Scottish Information Commissioner (SIC) (who regulates FOI but not data protection in Scotland) reflected on arrangements in Scotland whereby her budget is set and granted by the Scottish Parliament, to whom she also reports.

"The key benefit for the SIC in the direct relationship with the Parliament is one of independence and, just as importantly, about perceptions of independence. By being answerable to Parliament, rather than to a government department, there is a clear and demonstrable separation between the regulator (the IC) and the regulated (the Government). This independence supports the building of trust between the public and public bodies and removes the opportunity for perceptions that IC's actions could be

*politically influenced because of the relationship or the way the organisation is funded (I am not suggesting for a moment that is the case). In relation to funding, it also means that grant funding is more focused on the functions the IC provides under statute than on political aims for public sector spending which is essential in a service that upholds democratic rights."(*Scottish Information Commissioner*)*

6.44 Many respondents considered it inappropriate for an organisation to be reporting to a department which it was also required to regulate and raised concerns about conflicts of interest and a perception of bias. Of those who had a mixed opinion, some took a pragmatic view that there were means by which independence and accountability could be maintained with both reporting arrangements. Those that considered existing arrangements reporting to the MoJ worked well referenced framework and funding agreements which supported independence. Individual respondents – as opposed to representatives of organisations - tended to favour reporting to Parliament with the exception of those respondents who considered parliament to be not beyond reproach itself.

6.45 The ICO in its official response to the Review stated that designating the Commissioner as an Officer of Parliament would underline the ICO's all-important independence from government and avoid any appearance of conflict of interest in its dealings with departments. The ICO proposed that it could retain a Memorandum of Understanding with the MOJ as the policy department, even if it were reporting to Parliament. The ICO stated that, whether or not the Commissioner was designated an Officer of Parliament, to improve the visibility of information rights, the ICO would benefit from a strong relationship with the Justice Committee, for example an annual appearance linked to the publication of the ICO's Annual Report.

6.46 Although there was strong support for maintaining and strengthening independence, no evidence was put forward to suggest that there is in practice a problem with the current arrangements. The ICO has taken enforcement action against government departments and publicly called on the government to strengthen data protection and information rights more generally.

6.47 As well as considering the issue of the body to which the ICO should report, the Review sought to better understand the structure of the organisation as a corporation sole and how this impacted on independence and perceptions of independence. The Review has drawn on the work of the Organisation for Economic Co-operation and Development (OECD) in its publication 'The Governance of Regulators[11]' (2014). It stated that '…*the great majority of independent regulators in OECD countries have a board (or commission), and that a board is considered more reliable for decision-making as collegiality is expected to ensure a* greater level of independence and integrity.' (OECD 2014: p71).

6.48 In addition, two further Reports have provided the Review with views on the corporation sole model and its impact on the independence – and perceived independence - of the organisation. The 'Data Sharing Review[12]' by the previous Information Commissioner, Richard Thomas and Sir Mark Walport, now the Government's Chief Scientific Adviser, considered the structure of the ICO and concluded that the corporation sole model was not fit for leading the organisation into a new era. It stated that a single commissioner could find himself or herself subject to significant and, at times, inappropriate pressure from stakeholders, and that a multi-member Commission could reinforce the organisation's independence.

[11] http://www.oecd.org/gov/regulatory-policy/governance-of-regulators.htm
[12] http://webarchive.nationalarchives.gov.uk/+/http:/www.justice.gov.uk/docs/data-sharing-review.pdf

6.49 The Leveson Report[13] published in 2012, made the following recommendation to the MoJ:

> "*The opportunity should be taken to consider amending the Data Protection Act 1998 formally to reconstitute the Information Commissioner's Office as an Information Commission, led by a Board of Commissioners…The model of a single post holder is not one which is generally encountered in modern regulatory regimes, especially those whose responsibilities extend to powerful business sectors*" (Leveson Report, Part H, Chapter 5, para 4.5, p1108).

KEY FINDINGS

6.50 There has been a growing call to strengthen the independence of the ICO. The public consultation for this Triennial Review presented this issue in terms of reporting either to Parliament or to a government department. While the option of reporting to Parliament received strong support, some consultees reflected that the same potential conflict of interest could emerge were the ICO to receive funding for FOI and report to but also hold parliament to account on FOI and data protection.

6.51 Other considerations were not presented to consultees, such as the option to review the 'corporation sole' status of the organisation. The Review has drawn on evidence which highlighted that the corporation sole model does not provide the strongest model to enhance independence or perceived independence.

6.52 A key criteria for the delivery model for the ICO should be to protect the ICO's actual independence and enhance its perceived independence in public and that the delivery model itself, as much as its reporting line, should best reflect independence in its set-up.

d) Analysis of alternative delivery models

6.53 Any future delivery model will need to address the recommendations arising from the key findings of this Review which set out that the delivery model should:

i. enable a greater focus on performance and efficiency and enhance service delivery;

ii. support a likely increasing demand on data protection advice and regulation and respond to the higher profile and enhanced public visibility on issues arising with increasing frequency and publicity around privacy in the digital era; and,

iii. protect the ICO's actual independence and enhance its perceived independence in public.

6.54 The Review considered a number of specific alternative delivery models that must be considered by all Triennial Reviews as set out in Cabinet Office guidance. This Review excluded five of those options for the reasons set out in the table below:

[13] http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_iv.pdf

Delivery Options inappropriate for delivery of ICO functions

No	Delivery model	Reason for excluding
1	Move out of central government and deliver at a local rather than a national level	The data protection scheme delivered by the ICO is UK-wide. FOI is devolved and regulated by the Scottish Information Commissioner in Scotland. Delivering these at local level would duplicate administration, increasing costs considerably. Data protection particularly is increasingly a regional (EU) and global matter and smaller bodies would be less influential. Local variations in decision-making could lead to legal challenges. There is no evidence to suggest this is a viable option.
2	Bring inside a government department (MoJ)	EU law requires member states to establish an 'independent' supervisory authority for data protection regulation. The ICO is required to enforce the obligations under the FOIA on public authorities. It would be entirely inappropriate for this function to be based within a department it was required to assess. The functions need to be delivered at arms-length from Ministers.
3	Delivery via new Executive Agency	The same arguments apply for the reasons against bringing inside a government department.
4	Voluntary/charity sector	It would not be appropriate for a voluntary/charity sector body to take on delivering statutory functions pertaining to sensitive personal data and to government information. It would be highly improbable that a plausible funding model could be found for such an organisation. No evidence was presented to the Review which would suggest that, within the wide range of organisations that populate the sector, is one which could incorporate the objectives and expertise of the ICO within its scope or purpose.
5	Less formal structure – delivery by an informal stakeholder group or internal committee?	The legal and policy arguments for an independent supervisory authority are set out above. A formal structure is required to deliver the complex functions and to maintain independence.

6.55 Having excluded options 1-5 above, the Review considered the following three delivery model options in further depth: the delivery of FOI and data protection functions separately; a commercial model in entirety; and, merger with another body.

6.56 The reasons why these three options have been excluded are set out in the table below:

	Delivery Model	Reason for excluding
1	Delivering FOI and data protection functions separately	The Review considered whether the FOI function could be merged with another body and for the ICO to be focused on data protection solely. However, the ICO and others made a strong case for the integration of information rights, balancing the right to privacy and the right to know. Data protection factors often need to be taken into account in deciding on FOIA requests and there is sometimes a FOI dimension to some DPA decisions. No appropriate alternative delivery mechanism for regulation of FOIA has been identified, and the Review considered that the two main functions (data protection and FOIA) should remain together, recognising that the ICO has sought to make efficiencies in delivering the processes alongside each other.
2	Commercial model in entirety	A fully commercial model is not a viable option in the case of the Information Commissioner, as while there are areas that could be reviewed for opportunities to contract out (for example awareness raising), activities such as policy advice and assessment have to be in-house to be close to the Commissioner as the Commissioner is required to set policy and undertake assessments.
3	Merger with another body	The ICO works closely with the following organisations and there may be overlaps in this space: i. The National Archives ii. OfCom iii. Surveillance Camera Commissioner iv. Interception Commissioner The ICO has synergies with and works in partnership with the organisations above, all of which, with the exception of OfCom, are significantly smaller than the ICO. The Review considers that the regulatory landscape in the broad area of open data, transparency and privacy is not as clear as it might be and that the number of regulators in this area could potentially be reviewed. However, this is outside of the scope of this Review. There is no organisation with whom it would be sensible at this stage for the ICO to consider merging with.

Delivery as a Non Departmental Public Body

6.57 The Review then went on to consider the continued delivery of the functions under review as an NDPB. The government set 'three tests' which need to be met to merit delivery of functions as an NDPB. These are:

i. Does the ICO need to be politically impartial?

ii. Does the ICO perform a technical function?

iii. Does the ICO act independently and transparently to establish facts?

6.58 This Review has already established that the ICO must be independent of Government under EU and domestic law. The investigation of FOI and data protection complaints,

preparation of advice and guidance and the defence of decisions before tribunals are all technical functions. In exercising their functions under the DPA 1998 and the FOIA 2000 (and others), the ICO acts independently and transparently to establish facts. The ICO's functions therefore clearly meet all three tests and delivery of these functions as an NDPB is a viable delivery option.

NDPB: Single or multi-member Commission

6.59 The Review considered whether the NDPB model for delivery of the ICO's functions would best be supported through a single or multi-member Commission model. The aforementioned OECD report 'The Governance of Regulators' (2014) set out the factors in considering the potential value of a multi-member compared with a single-member decision-making model. These factors include:

i. "*Potential commercial/safety/social/environmental consequences of regulatory decisions, taking account of the degree of impact of a risk event and the probability of its occurrence – a group of decision makers is less likely to be 'captured' than an individual and a group will bring differing perspectives to decisions;*

ii. *Diversity of wisdom, experience and perceptions required for informed decision making because of the degree of judgment required (for example, where regulation is principles-based or particularly complex) – collective decision making provides better balancing of judgment factors and minimises the risks of varying judgments;*

iii. *Difficulty and importance of maintaining regulatory consistency over time – where regulatory decisions require a high degree of judgment, a multi-member decision-making body provides more "corporate memory" over time*;

iv. The report also reflected on the: "*Importance of decision-making independence of the regulator – a board will be less susceptible to political or industry influence than a single decision maker*."

6.60 The OECD set out eight principles for decision making and governing body structure, one of which states that:

> "*To avoid conflicts of interest, where there is a need for formal representation of specific stakeholders in strategic decision making, stakeholder engagement mechanisms such as an advisory or consultative committee should be established, rather than making those stakeholders members of the regulator's governing body*." (OECD, 2014: p68)

6.61 The report also sets out principles for the relationship between the responsible accountable political authority, governing body and the Chief Executive Officer. It states that:

> "*There should be a clear allocation of decision making and other* responsibilities *between the responsible accountable political authority, the governing body and the Chief Executive Officer (CEO) or individual in charge of the organisation's performance and implementation of decisions. Where a regulator has a multi-member governing body, the CEO or individual responsible for managing the organisation's performance and implementing regulatory decisions should be primarily accountable to the regulator's governing body*." (OECD, 2014: p68)

6.62 The ICO is informally set up in such a way, despite being a corporation sole. It has a deputy FOI and deputy data protection commissioner and a deputy Chief Executive Officer. However, the accountability is ultimately entirely in the hands of the Information Commissioner and many of the benefits of the multi-member model are not fully exercised.

Additionally, as this is not a formalised structure, there is no guarantee that this would continue in the future.

6.63 The Data Sharing Review Report by the previous Information Commissioner, Richard Thomas, and the Government's Chief Scientific Adviser, Sir Mark Walport recommended that a Commission with a supporting executive team replace the single Information Commissioner[14]. The report stated:

> "*An important question to address is whether the single commissioner* model*, as currently exists, is best placed to lead and manage the regulatory body as it moves into a new era. We have come to the firm conclusion that it is not. We therefore recommend an alternative model in which the regulatory body is re-constituted as a multi-member Information Commission, to reinforce its status as a corporate body.*" (Thomas/Walport Review 2008:69)

6.64 The report sets out the advantages of a multi-member Commission, including that it would:

- strengthen the influence and authority of the ICO;
- reduce the risk of a single commissioner personalising the work of the regulatory body too much - decisions that must be taken are often uncomfortable and unwelcome. The work of the regulator could be damaged if – for whatever reason – the commissioner suffers poor personal or professional relationships with key stakeholders, such as ministers and officials;
- strengthen the regulator's independence as a single commissioner could find himself or herself subject to significant and, at times, inappropriate pressure from stakeholders - a multi-member commission would be more likely to be able to handle such pressures than any single individual;
- bring to the regulator the benefits of different Commissioners' diverse backgrounds and skills.

6.65 The Leveson Report[15] published in 2012, commented that:

> "*The* merits *by contrast of a formal Board constitution potentially include the following: a) the benefits of collective decision making…b) firmer discipline can be maintained in decision-making, including the need to proceed by means of structured agendas, formal papers and recorded minutes…; c) there are formal and precisely defined delegations…"* (Part H, Chapter 5, paragraph 4.7, p1109).

6.66 In his official response to the Leveson report, the Information Commissioner agreed that the opportunity should be taken to consider this option, but highlighted the merits of the single Commissioner model as having clear lines of accountability; quick decision-making; a simple, easy understood approach to governance that minimises costs; and, the benefits of a single figurehead both internally and externally. Additionally, the Information Commissioner stated:

> "Lord *Justice Leveson suggests a Board of Commissioners with suitable expertise drawn from the worlds of regulation, public administration, law and business with active consideration being given in that context to the desirability of including a Commissioner from the media sector. Given that the purpose of data protection legislation is primarily to*

[14] http://webarchive.nationalarchives.gov.uk/+/http:/www.justice.gov.uk/docs/data-sharing-review.pdf
[15] http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_iv.pdf

protect the privacy of personal information, the Board would presumably also include one or more Commissioners with expertise from the worlds of individual rights, consumer protection and privacy protection. This raises a question as to the size of the Board. If there is to be a Commissioner from the media sector should there not also be Commissioners from the financial services sector, the marketing sector, the retail sector (online and offline), the public services sector and so on. These are all sectors for which data protection compliance is arguably more central to day to day business activities than it is for the media. It is essential that any Board is of manageable size and is constituted in a way that does not call into question the ICO's independence."

6.67 The Review considered that the ICO's views on the inappropriateness of specific stakeholder representation on Commissioning Boards was aligned with the recommendations from the OECD which stated that stakeholder engagement mechanisms should be established rather than those stakeholders becoming members of the regulator's governing body (see paragraph 6.38 above).

6.68 It is crucial that the organisation develops an enhanced role with regards to public engagement on the issue of data privacy and this requires a strong focus on data protection. In the context of greater devolution across the UK, a stronger presence from the Devolved Administrations would possibly strengthen the presence of the organisation in these regions.

DELIVERY MODEL CONCLUSIONS

6.69 The Review therefore concludes that while the ICO meets the three tests required to continue delivery as an NDPB, the single Commissioner corporation sole model does not provide the organisation with the structure it most needs to optimise service delivery, ensure best governance, accountability and strengthened independence.

6.70 The Review concludes that in order to address the key findings and recommendations emerging from Stage one of the Triennial Review, the ICO should be reconstituted as a small multi-member Commission with a Chief Executive reporting to the Commission.

6.71 The Review considered that the ICO should continue to report to the sponsor department and that a small Commission would better demonstrate the organisation's independence in delivering its statutory functions than the current corporation sole model, for the reasons set out in paragraphs 6.59 to 6.66 particularly.

7 Stage One Recommendations and Conclusions

Functions

7.1 As set out at paragraph 5.11, the Review concluded that the functions of the ICO are still required. There is strong public support for the functions and there is a clear legal requirement.

Form

7.2 The Review concluded that:

i. the organisation meets the Cabinet Office's three tests to merit continued delivery as an NDPB;

ii. the findings from the Review showed that the delivery model needed to meet the following criteria:

- It should enable a greater focus on performance and efficiency and enhance service delivery;
- It should support a likely increasing demand on data protection advice and regulation and to respond to the higher profile and enhanced public visibility on the issues arising from privacy and protection in the digital era;
- It should protect the ICO's actual independence in delivery of its statutory functions and enhance its perceived independence.

7.3 Consequently, the Review recommends that:

i. the organisation should be reconstituted as a small multi-member Commission with a Chief Executive Officer responsible for driving performance, operational delivery, value for money and opportunities for cost recovery where appropriate;

ii. the constitution of such a commission should build on best practice from international and domestic examples;

iii. the organisation should continue to be sponsored by and report to the MoJ;

iv. preparatory work for all of the above should be taken forward to inform the recruitment of key personnel to the ICO.

Other recommendations

7.4 While this Review will not progress to Stage Two of a standard Triennial Review process due to the recommended change to the delivery model, the Review makes two additional recommendations as follows:

i. The sponsorship department should make sure sponsorship arrangements best support the proposed new delivery model; and,

ii. The sponsorship team needs to work quickly alongside the ICO to develop a more sustainable funding model for its data protection work.

7.5 The Review recognises that transitioning to a small multi-member commission would require primary legislation. Notwithstanding the opportunity presented by an early legislative vehicle, a major piece of legislation will be required to implement the new Data Protection Regulation and Directive when they are concluded in Brussels. This is likely to

be required within the next two years. Depending on what form it takes, that may offer a suitable opportunity to make the necessary changes to the governance structure of the ICO as it currently appears in the DPA.

7.6 In the meantime, the policy sponsorship team, the DCMS Arms-Length Body Team and the ICO are required to work together to deliver the recommendations of this Review and to support the ICO appropriately to be in the optimum form, fit for the future.

8 Annexes

Annex A: Challenge Group Members

The Challenge Group was made up of the following nine members:

1. Sue Street	Non-Executive Director, MoJ
2. Alan Eccles	Chief Executive and Public Guardian, Office of the Public Guardian
3. Oliver Lodge	Director, National Audit Office
4. Scott McPherson	Director, Law, Rights and International, MoJ
5. Pat Lloyd	Director, Commercial and Contract Management, MoJ
6. Lexi Rees	Senior Policy Advisor, Public Bodies Reform Team, Cabinet Office
7. Roger Smethurst	Deputy Director, Head of Knowledge and Information Management, Cabinet Office
8. Carole Oatway	Chief Executive, Criminal Injuries Compensation Authority
9. Alison Wedge	Deputy Director, ALB Governance Division, MoJ (Chair)

Annex B: Call for Evidence Questions

Q1. With regard to the ICO's functions to enforce and oversee the following:

- Freedom of Information Act 2000
- Data Protection Act 1998
- Environmental Information Regulations 2004
- Privacy and Electronic Communications Regulations 2003
- INSPIRE Regulations 2009

(a) Do you consider, in relation to any or all of the above, that the provision of their services to individual users and to organisations remains necessary? Please explain your reasons for your answer.

(b) Do you consider that services provided by the ICO in these areas could be improved? Please explain your reasons for your answer.

(c) Do you consider that services provided by the ICO could be delivered differently? Please explain your reasons for your answer, including any examples from other regulators or comparable international bodies.

Q2. Is the independence of the ICO best supported by reporting to Parliament or to a government department such as the Ministry of Justice? Please explain your reasons for your views.

Q3. With continually changing technology, an increased use of social media and the internet, do you believe the ICO will continue to be fit for purpose?

Q4. Do you have any additional comments you would like to submit as evidence to the Review?

Annex C: List of respondents

In addition to responses from approximately 50 individuals, the Review also benefited from the considered input of the following organisations. The Review is extremely grateful to all who responded to the consultation.

ARA Legislation and Standards Working Group Secretary
Association of Chief Police Officers (ACPO)
After Adoption
Alternative Futures Group
Altius
ARC
Association of School and College Leaders
Barnet Homes
Birmingham Community Healthcare
BCS, The Chartered Institute for IT
Belligerent Victims
Big Brother Watch
Black Country Partnership NHS Foundation Trust
BLM (solicitors)
British Bankers' Association and Association for Financial Markets in Europe
British Gas
Caring Hands Domiciliary Services Limited
CAS
Changing Lives
Circles UK
City Health Care Partnership CIC
City of Cardiff Council
Competition and Markets Authority
Compliance Training Products Ltd
Crown Prosecution Service
Dilys Jones Associates Ltd
Dysguise ltd
E. Rex Makin & Co
East and North Herts NHS Trust
EE
EMIS
Experian
Firesave Credit Union Limited
Forensic Accounting & Fraud Examination Services.
Gateshead Council
General Practice
Govanhill Council
Governor Technology
Grove House Practice

Haringey Advisory Group on Alcohol
HM Land Registry
Holywell-cum-Needingworth Parish Council
Info Planet Ltd
Institute of Chartered Accountants in England and Wales
Intellectual Property Office
Intrinsic Financial Services Ltd.
Jubilee House Care Trust Ltd
Lancashire Fire & Rescue Service
Leeds City Council
Local Council
Local Government - Metropolitan Borough Council
London Fire and Emergency Planning Authority
London Higher
Midlands Professional Development
motive8 ltd
Nacro
Network Housing Group
Newcastle upon Tyne Hospitals NHS Trust
NHS
NHS Foundation Trust
NHS Hospital - Acute
NHS National Services Scotland
Northern Ireland Civil Service
Nominet
Nottingham University Hospitals
NOW:Pensions
Nursing & Midwifery Council
Office of the First Minister & Deputy First Minister
Oxfordshire County Council
PCS Branch Executive Committee
Peninsula Enterprise
Personal Touch Financial Services Limited
Printing
QT&C iSolutions Ltd
Retail Crime Operation (Birmingham) Ltd
SAAAS
Scottish Children's Reporter Administration
Scottish Government
Scottish Information Commissioner
Seetec
Sheffield Hallam University
Somerset County Council
South Essex Partnership University NHS Foundation Trust

South Tees Hospitals NHS Foundation Trust
Splash Creative
Staffordshire County Council
Sterling Limited
Stockport FLAG
Swan Housing
Tameside MBC
Tavistock and Portman
The Centre of Excellence for Information Sharing
The Direct Marketing Association (UK) Ltd
The J Kenyon Mason Institute for Medicine, Life Science and the Law at the University of Edinburgh
Transport for London
University of Cambridge
Unlock
Veritau Limited, for North Yorkshire County Council
Victim Support
Viridian Housing
Wales Community Rehabilitation Company
Welsh Government
West Berkshire Council
West Midlands Police
Winchester District Citizens Advice Bureau
www.TheMorningBugler.com
Yarlington Housing Group

Annex D: Glossary

20 Year Rule	The rule that records of historical value held by central government departments and certain other public bodies are transferred to the National Archives Office by the time they are 20 years old. This is a requirement under the Public Records Act
Accounting Officer	The person (usually the CEO) in a public sector organisation that Parliament calls to account for stewardship of the organisations resources
Arm's Length Body	An organisation that delivers a public service, is not a ministerial government department, and which operates to a greater or lesser extent at a distance from Ministers
ALB Governance Division	The Division in the Ministry of Justice responsible for driving up standards to ensure that its ALB's are supported by consistent governance arrangements with clear lines of accountability
Apportionment model	A funding model whereby all costs (frontline and back office) are apportioned between the various funding streams of the organisation
Back office costs	The costs associated with technology, human resources and finance required to manage an organisation
Call for evidence	The term used for inviting interested parties to signal their interest and express their views and concerns on a particular consultation
Challenge Group	A group of people who robustly challenge the assumptions and conclusions of the Review. Each member of the group brings their own specialist expertise, such as business strategy, commercial, accounting or audit etc.
Citizen Space	A software tool used by the government for consulting and engaging with the public that allows respondents to submit their views online
Commercial Model	A business model used in the public sector that delivers public services through a number of initiatives including partnering with the private sector, delivering services digitally and sharing of services
Complaint casework finished	The number of complaints processed and completed within a given time period
Complaint casework	The number of complaints registered and not yet completed

'Consent for cookies' message	A message that pops up on a user's device when they access certain websites, requesting consent to download a 'cookie', a small file, typically of letters and numbers onto the device. Cookies allow a website to recognise a user's device
Contracts Finder	An online tool that allows you to search for information about contracts worth over £10,000 with the government and its agencies
Convention 108	The Convention for the Protection of Individuals with regard to automatic processing of personal data which was adopted by the Council of Europe in 1981
Corporation Sole	Either a public or ecclesiastical office that has a separate and continuing legal existence, and only one member (the sole officeholder)
Data controller	Person who determines the purposes for which and the manner in which any personal data are to be processed
Data protection	The protection of personal data
Data Protection Act (DPA)	An Act of Parliament which defines UK law on the processing of personal data
Dataset	An organised collection of data or sets of information
Decision Notice	A notice issued by the ICO detailing the outcome of an investigation to highlight particular issues with an authority's handling of a specific public request
Delegated Expenditure Limits (DEL)	The government budget that is allocated to and spent by government departments. This amount, and how it is split between government departments, is set at Spending Reviews
Delivery Model	The structure of an organisation required to enable efficient delivery of its functions
Departmental Select Committees	Cross-party groups of MPs responsible for the scrutiny of government departments
Devolved governments	The transfer of powers from the UK (a sovereign State) parliament to government at a sub-national level (assemblies in Wales, Scotland and Northern Ireland)
Digital era	Also known as the Information Age, a period in history characterised by a shift from traditional industry to an economy based on digital technology

Digital revolution	Also known as the Third Industrial Revolution, is the change from analogue, mechanical and electronic technology to digital technology
Data Protection Directive	A European Union Directive (legal act) which regulates the processing of personal data within the European Union
Environmental Information Regulations 2004 (EIR)	Derived from European law, these Regulations give the public the right to request environmental information from public authorities and requires public authorities to make environmental information available proactively.
Executive Agency	An executive agency is a part of a government department which enables executive functions within government to be carried out by a well-defined business unit with a clear focus on delivering specified outputs within a framework of accountability to ministers
First Tier Tribunal (FTT)	A tribunal (body established to settle disputes), independent of government, that will listen to both sides of an argument before reaching a decision
Freedom of Information Act	Domestic law that gives a person the right to access recorded information held by public sector organisations
Frontline costs	The costs associated with the front line activities of an organisation
Governing body	A group of people who draw up the rules that govern the actions and conduct of a body such as a school or organisation, and who ensure that these rules are followed
Grant-in-aid	A source of finance for NDPBs that have general rules (less conditional than a 'grant') as to how the funding should be spent
INSPIRE Regulations 2009	Regulations in relation to the pro-active provision by public authorities of spatial data, often referred to as geospatial data or geographic data
Justice Select Committee	A cross-party group of MPs appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and associated public bodies
Managing Public Money	A handbook published by Her Majesty's Treasury that sets out the main principles for dealing with financial resources in the UK public sector
Memorandum of Understanding (MoU)	An agreement between two or more parties that expresses mutual accord on an issue. Although it has no legal claim they are generally recognised as being binding
Merger	A combination of two organisations to form a new organisation

Multi-member commission	An organisation led by more than one member and jointly accountable for the organisation
Non-Departmental Public Body (NDPB)	A NDPB is as a body which has a role in the processes of national government, but is not a government department or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers
Non-executive members	Members of the Board of Directors of an organisation but not part of the Executive Management Team. They focus on board matters but are removed from the day to day running of the organisation
Notification fees	A fee paid annually by organisations registered on the ICO's Data Register, which covers work on data protection
Open government	A government committed to being more open, accountable, and responsive to citizens
Organisation for Economic Co-operation and Development	An international economic organisation of 34 countries founded in 1961 to stimulate economic progress and world trade
Policy sponsorship team	The team within the MoJ that provides appropriate oversight, scrutiny, support and assistance to a particular public body
Politically impartial	Independent of and unbiased towards any of the political parties
Privacy and Electronic Communications Regulations 2003 (PECR)	EU Regulations supporting the Data Protection Act by regulating the use of electronic communications for unsolicited marketing to individuals and organisations
Protection of Freedoms Act 2012	The Act of Parliament that governs the use of individuals' data in a variety of contexts, including in relation to CCTV, fingerprint and DNA retention
Public consultation	The process by which the government seeks the views and opinions of the public on a particular matter of interest in order to take their views into consideration when developing new policies
Register of data controllers	A register held by the ICO of all organisations that process personal information. Organisations are responsible for registering with the ICO. Failure to do so is a criminal offence
Regulator	A person or organisation that oversees an organisation to determine whether it is working according to official rules or laws

Reporting line	A vertical route in a hierarchy made up of individuals who report to or are responsible to the next person higher up
Science and Technology Committee	A cross-party group of MPs appointed by the House of Commons to ensure that Government policy and decision-making are based on good scientific and engineering advice and evidence
Second digital revolution	An age in which the digital world becomes completely embedded throughout the manufactured and engineered products on which advanced societies depend
Senior Responsible Owner (SRO)	The individual responsible for ensuring that a Programme/Project meets its objectives and delivers the projected benefits
Single member Commission	An organisation led by a single member who is accountable for the organisation (similar to a corporation sole)
Statutory duty	The laws that an organisation, body or members of a profession must abide by
The internet of Things	The interconnection via the Internet of computing devices embedded in everyday objects, enabling them to send and receive data
Transparency agenda	The plan that sets out how the government will become more open and transparent, for example, by proactively publishing data on how public money is spent
Unsolicited marketing	Direct Marketing messages, usually in the form of a text message, phone call or email that has not been specifically requested by the recipient
Value for money	The term used to assess whether or not an organisation has obtained the maximum benefit from the goods and services it both acquires and provides, within the resources available to it
Written Ministerial Statement	A written statement issued in the House of Commons and/or House of Lords to announce the day-to-day business of government on the official record and in the public domain